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ABSTRACT

Amidst much controversy, the United States Department of Justice has filed an amicus brief in the Supreme Court on behalf of the special minority admissions program at the University of California Medical School at Davis. This fact sheet is intended to show why Asian and Pacific Americans and those friendly toward Asians should pay careful attention to the government's position toward Asians as reflected in the Bakke case and beyond. The Justice Department's position in Bakke is of special concern to Asian and Pacific Americans because the government has become the first participant to challenge the participation of Asian Americans in a minority program. The government's brief says that Asian Americans have been admitted into medicine adequately without special admissions. It is noted that the Government brief contains misleading or irrelevant suggestions that Asian and Pacific Americans are too well off to suffer the effects of past discrimination. Furthermore, the brief fails to qualify its figures properly. If the arguments against Asians and Pacific Americans prevail, they will lose services in programs dealing with bilingual education, law enforcement, small business aid, higher education, and senior citizen programs. (Author/AM)

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ASIAN AND PACIFIC AMERICAN FEDERAL EMPLOYEE COUNCIL
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September 30, 1977

The Honorable Griffin B. Bell
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Bell:

The Justice Department's recent amicus brief filed with the Supreme Court in the case of Regents v. Bakke raises serious questions of concern to the Asian and Pacific American community. Among these questions are:

(1) How vigorously will the Government at oral argument on Bakke, on October 12, 1977, press its position that the constitutionality of Asian-sensitive medical admissions should not now be decided in the Supreme Court?

(2) To what extent, if at all, does the Government's brief indicate a low Administration priority on programs for Asian and Pacific Americans outside medical school admissions?

(3) What efforts will the Government make at oral argument on October 12 to limit the damage to these other Asian and Pacific American-sensitive programs?

We would appreciate a response from the Department which answers the above questions.

Members of the Asian and Pacific American Federal Employee Council (APAFEC) have studied these and other questions raised by the brief. Some of the results of our study are embodied in the enclosed fact sheet. We are sending this fact sheet to you in the hope that those who will represent the Government at oral argument on October 12 will find it useful.

Sincerely,

Stephen Thom
Chairperson, APAFEC

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ASIAN/PACIFIC AMERICANS

Amidst much controversy, the U.S. Department of Justice has filed an amicus brief in the Supreme Court on behalf of the U.S. Government in Regents v. Bakke, the lawsuit challenging the special minority admissions program at the University of California Medical School at Davis. This fact sheet is intended to show why Asian and Pacific Americans and those friendly toward Asians should pay careful attention to the Government's position toward Asians in Bakke and beyond.

I. WHY IS THE JUSTICE DEPARTMENT'S POSITION IN BAKKE OF SPECIAL CONCERN TO ASIAN AND PACIFIC AMERICANS?

By filing its amicus brief, the Government has become the first participant in a case of the Bakke type to single out Asian/Pacific Americans from other minority groups for a constitutional challenge to their participation in a minority program. An unfavorable decision toward Asians in Bakke could gravely jeopardize Asian and Pacific American participation not only in minority admissions, but also in minority programs affecting every sector of American life. Even in the absence of such a decision, the brief casts doubt upon the Administration's support for including Asian/Pacific Americans in these programs.

II. WHAT IS THE JUSTICE DEPARTMENT'S POSITION?

The Government's brief argues that "minority-sensitive" admissions are constitutional only if they are the only way that a minority group can get substantial representation in a profession. The brief says that Asian Americans seem to have gotten into medicine adequately without special admissions.

The brief uses Census Bureau data on the numbers of medical school admittees and doctors who are Asian in order to show that Asians in the U.S. are adequately represented in the schools and the profession. The Government also uses the number of Asians admitted to Davis under regular admissions in order to show that Asians could be adequately represented without special admissions.

The brief does not go on to conclude that Asian special admissions are illegal. Rather, it urges the Supreme Court to send this question with the rest of the case back to the lower courts for retrial.

At this time, the Justice Department has not indicated how strongly it will urge retrial on the issue of the constitutionality of including Asian/Pacific Americans in the program. If the Department makes weak arguments on the retrial question during the oral argument October 12, the Supreme Court could

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decide against retrial and flatly declare the inclusion of Asians in the program to be unconstitutional. This outcome would be extremely damaging to Asian and Pacific Americans.

III. WHY ARE THE ARGUMENTS AGAINST ASIAN AND PACIFIC AMERICAN PARTICIPATION UNPERSUASIVE?

1. The Government's brief contains misleading or irrelevant suggestions that Asian and Pacific Americans are too well off to suffer the effects of past discrimination.

The brief recites some facts taken from the Census which suggest that Asian and Pacific Americans are so well off as not to need any special steps to remedy the effects of admitted past discrimination against them. Foremost among these are figures on educational attainment, which superficially look better than those for whites: 20.4% of Asians 25 years old and over have completed 4 or more years of college, compared to 11.3% of whites.

Relatively high educational levels do not imply equal educational opportunity. A large proportion of highly educated Asian and Pacific Americans received their education before coming to America.

Nor do relatively high educational levels imply material wellbeing. For example, according to the Census, Japanese, Pilipino and Chinese American males have a median annual income of $5,939 as compared with the white figure of $7,106. Figures for males and females in the four largest metropolitan areas show that white-Asian income ratios for some race-sex-SMSA categories exceed 2 to 1. Further, a 1977 study concludes that white-Asian income differentials tend to increase--not decrease--with increases in educational level.

The brief also points to unemployment rates--2% for Japanese, Chinese and Pilipinos, and 5% for whites. However, minority unemployment is widely thought to be understated. Unemployed Asian/Pacific Americans are disproportionally limited- or non-English-speaking, so that employment status is hard for enumerators to ascertain. Many unemployed Asian/Pacific Americans are in ghettoes where census undercounts occur.

Because of discriminatory quota provisions in the immigration laws before 1965, segments of the Asian/Pacific American community are in this country without proper documentation. They cannot look for work for fear of deportation, and consequently are not counted as unemployed. For cultural reasons, many do not want to admit to "looking for work" when their search has failed. Even for those who do not fear deportation, there is a fear that being reported as unemployed will stigmatize them in the community. The fact that there are 2.8 Chinese families in poverty for every family on welfare, compared with the national average of 2.1, suggests that the fear of stigmatization operates even when money benefits are at stake.

The brief points to the percentage of Pilipinos, Chinese and Japanese holding professional, managerial and administrative positions, 29.1% as compared with 23.9% for whites. However, few of the Asian/Pacific Americans in this category are managers, and very few are in policymaking positions commensurate with their education or experience.

Although substantial numbers of Asian/Pacific professionals have entered the U.S. since the 1965 reform of the immigration laws, there is not a high degree of job opportunity. Many such professionals are underemployed, taking menial jobs that most Americans would shun, subordinate positions, or lower pay than their white counterparts. According to a May, 1975 report on Korean and Pilipino health professionals issued by the California Advisory Committee to the U.S. Commission on Civil Rights, discrimination in licensure and employment cause many to be employed outside of their profession or specialty and below their competence.

Regardless of whether they are better or worse off than whites, Asian and Pacific Americans are worse off than they would be were it not for the pervasive discrimination encountered in America. The Government's discussion of the case of Califano v. Webster suggests that "at any level" of wellbeing, governments should be allowed to use "minority-sensitive" means to repair the harm done by discrimination.

2. The Government's brief fails to qualify its figures properly.

Census figures show that Asians are 3.6% (9,920) of U.S. doctors, but are 0.75% of the U.S. population. The Government concludes that there is "no apparent under representation of Asian-American persons" in the medical profession, and therefore, no need for special admissions for Asian and Pacific Americans.

However, the 3.6% figure is grossly inflated. The brief concedes that the U.S. has 9,796 foreign-born, Asia-educated doctors, but it fails to say that this number is almost as great as the 3.6% Asian doctors counted by the Bureau of the Census. For anyone to assert that foreign born and educated doctors reflect opportunities for Asian/Pacific Americans for medical education in America would be absurd.

Further, the brief suggests excluding "Asian-Americans" from special admissions based on data covering only three of the many Asian and Pacific American groups--the Chinese, Japanese and Pilipinos. In fact, there is very little official information on Koreans, who have immigrated to the U.S. in substantial numbers since immigration reform legislation in 1965; and such groups as Asian Indians, Samoans, Vietnamese, Hawaiians, Pakistanis and Cambodians are almost totally ignored. Asian and Pacific American

groups may be similar to one another in that they have faced racial discrimination and economic exploitation in America, but they are not so similar that a court should exclude all of them from a minority program based on figures for so few.

IV. IF THE ARGUMENTS AGAINST ASIAN AND PACIFIC AMERICANS PREVAIL, WHAT WILL ASIAN AND PACIFIC AMERICANS LOSE?

Asian and Pacific Americans need the same types of governmental programs that benefit members of other minority groups. The following are only a few examples:

Bilingual Education: Programs under Lau v. Nichols are needed to provide equal educational opportunity for a large and increasing number of children of immigrant Asian and Pacific Americans. Further corrective programs are needed for those who have not had equal schooling in the past. For example, a 1971 Berkeley study showed that 80% of Asians (both American and foreign born) admitted to the University of California, as compared with 50% of the general student body, needed special language skills training. The Asians' problems were different enough from those of other racial groups to warrant the setting up of a special section of the writing course reserved for Asian/Pacific Americans.

Law Enforcement: Participation by Asian/Pacific Americans is still insufficient for effective local law enforcement against violent crime in Asian/Pacific American inner-city ghettoes, despite Law Enforcement Assistance Administration minority hiring guidelines. Corrections hiring under the same guidelines is endangered by a California court challenge upon which Bakke is expected to have large impace. Asian and Pacific American participation in Federal law enforcement also seems in need of minority-sensitive measures. The Justice Department says that only 0.2% of its attorneys are Asian; approximately twice that proportion of all attorneys--0.4%--are Asian according to Census figures. The latter figure shows that Asian/Pacific Americans are underrepresented in the legal profession, and thus they are at a disadvantage in dealing with American legal institutions.

Small Business Aid: Asian/Pacific American businesses tend to be small, economically marginal, and concentrated in a few race-stereotyped categories: restaurants, groceries, laundries. A study by the Office of Minority Business Enterprise shows that 63% of Asian/Pacific American firms are in retail and selected services, and nearly 52% of Asian/Pacific American proprietorships have less than $5,000 annual gross receipts. The study further shows that many Asian/Pacific American businesspersons lack the ability to cope with new technology and changes in the marketplace. Federal small business loans and minority-sensitive technical aid programs are needed to help Asian/Pacific American businesses survive, expand or re-tool. Federal "8(a)" minority business

contracts are also needed in order to bring Asian/Pacific American businesses into the business mainstream.

Higher Education: The Department of Health, Education and Welfare is responsible for enforcing Federal contractor affirmative action rules for employment of minorities and women by higher education institutions. Despite this, Asian/Pacific Americans are underpaid and underranked according to American Council on Education data, and are nearly absent from policymaking positions.

Senior Citizen Programs: Elderly Asian and Pacific Americans have reason to fear "their" Federal, State and local governments. These governments have incarcerated members of this age group in concentration camps, denied them the right to apply for citizenship, prohibited their owning land, forbidden their marrying in this country by the effect of miscegenation laws, and subjected them to confiscatory and discriminatory "taxation" for the purpose of exclusion, all on the basis of Asian or Pacific race. Their well-founded fears hamper their access to governmental services for senior citizens. Language barriers have a similar effect. Any program offering such services must make special provision for Asian/Pacific elderly persons in order to reach them.

The above are examples of the kinds of minority-sensitive programs needed by the Asian and Pacific American communities. By singling out Asians as not needing one minority program, the Government opens the possibility that Asian/Pacific American participation in any or all minority programs could be eliminated. Of course, ending Asian/Pacific American participation in particular programs may not need a court decision. What the Administration or the courts say about Asians, in Bakke or elsewhere, can create an atmosphere in which, as a practical political and administrative matter, it becomes very difficult to meet Asian and Pacific American needs.

The Government's position in Bakke may also jeopardize Asian/Pacific Americans' alliances with other American minority, womens' and civil rights groups. Any seeming favor for one group over another can promote ill-feeling within the seemingly disfavored group and can further "divide and conquer" strategies aimed at weakening the very coalitions by which Asian/Pacific Americans join with other groups to promote the common goal of equality for all.

Bakke and the Government's position in this case thus raise the possibility of very serious harm to Asian and Pacific Americans and to other disadvantaged groups in their efforts to attain equality in America.

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This fact sheet was prepared by members of the Asian and Pacific American Federal Employee Council, P.O. Box 23125, L'Enfant Plaza Station, Washington, D.C. 20024.